

**Internal Revenue Service
Washington, DC 20224**

May 3, 2006

CC:ITA:B02:
CONEX-114442-06

Number: **INFO 2006-0043**
Release Date: 9/29/2006
UIL: 162.08-07

Joel Michael, Legal Services Coordinator
Minnesota House of Representatives
600 State Office Building
St. Paul, Minnesota 55155-1298

Dear Mr. Michael:

This letter responds to your inquiry dated February 27, 2006, regarding the application of the special “tax home” rules for state legislators. I hope the following general information is helpful.

Section 162 of the Internal Revenue Code allows a taxpayer to deduct travel expenses, including meals and lodging, paid or incurred “while away from home” in the pursuit of business. Under § 162(h), a state legislator generally may elect to treat the legislator’s place of residence within the legislative district as the legislator’s “home” for this purpose. A state legislator may not make this election, however, if the residence is 50 or fewer miles from the state capitol building. You have asked how to measure the 50-mile distance – whether by a straight line, by the shortest possible route, or by the route actually taken by the taxpayer.

Unfortunately, neither the Treasury Department nor the IRS have issued guidance on this question. However, the distance test in these rules may be viewed as similar to the 50-mile distance test provided in the moving expense deduction provisions. In order to claim a moving expense deduction, a taxpayer must have moved in connection with the commencement of work at a location that is at least 50 miles farther from the former residence than was the former work location (or former residence in certain cases). Publication 521, *Moving Expenses*, states that the distance is measured by “the shortest of the more commonly traveled routes” between the two points.

Again, I hope this information is helpful. If you have any additional questions, please contact me or _____, Identification Number _____, at _____.

Sincerely,

Robert M. Brown
Associate Chief Counsel
(Income Tax and Accounting)